

## REMARKS

Claims 1-40 are pending in the instant application. Claims 1, 10, 17, 21, 30, 37 and 40 are independent claims, and claims 2-9, 11-16, 18-20, 22-29, 31-36 and 38-39 depend, respectively, from independent claims 1, 10, 17, 21, 30, and 37. The Applicants believe that the claims define patentable subject matter in light of the following remarks.

The Office previously rejected the pending claims in light of the Peth reference (USP 6,957,192). As Applicants argued (and as the Office has now conceded) the Peth reference is not prior art to the present claims. Accordingly, the Office has withdrawn its rejection regarding the Peth reference.<sup>1</sup>

The Office, however, has issued another rejection in light of a new reference, Martin (USP 7,047,219). In support of its rejection, the Office simply makes the following bald allegation regarding the Martin reference:

Martin discloses, e.g. Figs. 1-2, a real-time Internet based finance system, e.g. 200, comprising a manufacturer or exporter who inherently possesses product information, financing parameter information, e.g. credit database 210, and a server system, e.g. 102 and a browser. Official Notice is taken that browser software used with web servers, web pages and a computer system has been common knowledge in the art previous to Applicant's filing date.

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<sup>1</sup> As part of its rejection regarding the Peth reference, the Office took Official Notice that 1) multiple servers used in an electronic commerce environment; and 2) determining the likelihood of a buyer being approved for financing, were well known in the art. Given that it was clear that the Peth reference was not prior art, Applicant did not traverse the Office taking Official Notice. Applicants, however, respectfully challenge the conclusory assertions made in the Office action without any supporting evidence that these elements are well known or obvious in the art. Applicants respectfully submit that these elements are not well known or obvious in this specific context, namely using multiple servers and credit report information of the buyer to determine at least a likelihood of the buyer being approved for financing of the at least one product being offered for sale online. M.P.E.P. §2144.03(E) states that "[i]t is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based." Accordingly, in the event that the Office intends to maintain its finding of Official Notice, Applicant respectfully requests that the Examiner produce references in support of the Examiner's contentions or, if the Examiner is relying upon personal knowledge to support the findings of what is known in the art, then the Examiner must provide an affidavit or declaration setting forth specific factual statements and explanations to support the findings. (See, e.g., M.P.E.P. §2144.03 and 37 C.F.R. §1.104(d)(2).)

The Office provides **no** additional basis for its rejection. Thus, the Office's rejection should be withdrawn for at least the following reasons.

First, the terse rejection that the Office did provide is factually incorrect. For example, the Office's statement that Martin discloses a "real-time Internet based finance system." Martin discloses a multi-user trade finance system for managing foreign and domestic accounts receivables. In determining whether a party has the necessary credit to obtain an account, the system requires "predetermined credit limits, insurance policies, [or] financial institutions' financial agreements." (*See* Martin, at Col. 2, lns. 35-37.) Thus, contrary to the Office's position, the Martin system does not make real-time decisions regarding a party's creditworthiness. Thus, the Office should withdraw its rejection for this reason alone.

Second, the Office's rejection fails to address several of the limitations included in the pending claims, which are not disclosed (or even suggested) in the Martin reference. For example, several of the pending claims require "a product being offered for sale online," "product information" regarding the product, and "personal information of the buyer" to be used to determine a likelihood that the buyer will be approved to buy the product.<sup>2</sup> The M.P.E.P. clearly states that "[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." Section 2142 of the M.P.E.P. goes on to state that "[t]o establish a *prima facie* case of obviousness, . . . the prior art reference (or references when combined) must teach or suggest all the claim limitations." Because the Office has not identified (and cannot identify) where such limitations are taught by the Martin reference, the Office has failed to provide a *prima facie* showing of obviousness. As such, the Office should withdraw its rejection for this reason as well.

Finally, in the event that the Office instead chooses to maintain its obviousness rejection, the Office should be required to provide a new rejection providing a clear basis for its position. M.P.E.P. Section 707 and 37 CFR 1.104(c)(2) both require an Examiner to clearly state the basis for rejecting the claims. Examiners are required to address each limitation of each claim, and are

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<sup>2</sup> The Office's action suggests that the exporters in the Martin reference "inherently possess[] product information." The action, however, never mentions or suggests that the Martin reference teaches or discloses "a product being offered for sale online," as claimed in the pending application. As such, the Office has apparently conceded that this limitation is not disclosed in the Martin reference. Moreover, Applicant's traverse the Office suggestion that such manufacturers have product information from a "product being offered for sale online."

prohibited from making omnibus rejections of all claims unless that rejection is applicable to all claims. Not only did the Office not clearly articulate the basis for rejecting each pending claim, but the Office failed to address numerous limitations contained in the pending claims. Thus, in the event that the Office intends to maintain this objection, the Office should be required to comply with its obligations under the M.P.E.P. and Code of Federal Regulations, and clearly articulate its basis for rejecting each of the pending claims.

### CONCLUSION

Based on at least the foregoing, the Applicants believe that claims 1-40 are in condition for allowance.

Applicants appreciate the Office's thorough examination of this case, which has been pending for over 5 ½ years and has been subject to multiple different rejections in light of multiple different references. Given the state of the prosecution, however, if the Examiner disagrees or has any question regarding this submission, the Applicants request that the Examiner set-up a telephone interview with the undersigned at (312) 775-8000 prior to issuing any further action.

A Notice of Allowance is courteously solicited.

Respectfully submitted,

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